IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

WP(C).No. 26875 of 2007(Y)

IA 1306/07 IN IA 2997/07 IN OS.29/2003 of I ADDL.SUB COURT, KOZHIKODE
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PETITIONERS:
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1. MUNDOLI CHERIYA MAYIN,
S/O.MUNDOLI KUNHALI, MUNDOLI HOUSE,
LALLALAM P.O., KOZHIKODE TALUK.

2. MUNDOLI KUNHAMUTTY,
S/O.MUNDOLI KUNHALI, MUNDOLI HOUSE,
LALLALAM P.O., KOZHIKODE TALUK.

3. MUNDOLI MUHAMMED,
S/O.MUNDOLI KUNHALI, MUNDOLI HOUSE,
LALLALAM P.O., KOZHIKODE TALUK.

4. MUNDOLI ABOOBACKER,
S/O.MUNDOLI KUNHALI, MUNDOLI HOUSE,
NALLALAM P.O., KOZHIKODE TALUK.

BY ADV. SRI.R.RAMADAS

RESPONDENT:

MYLADI KELAMBATH SATHI AMMA,
D/O.LAKSHMI AMMA, SREEHARI, NALLALAM P.O.,
KOZHIKODE TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.26875 of 2007

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Dated this the 10th day of September, 2007.

JUDGMENT

This Writ Petition is filed seeking to set aside the order passed under Ext.P12. By virtue of the said order, the court refused to review the order of appointing a Commissioner and at the same time, allowed the prayer for amendment made by the defendants. Learned counsel for the writ petitioners submits that there is no property as 'C' schedule and the entire property belonging to the plaintiff by virtue of transfer had been in the possession of the writ petitioners from the year 1980 onwards and therefore, the plaintiff is not having any title or possession over the property claimed and even if there had been any right it was barred by adverse possession and limitation also.

2. Now virtue of a commission what is attempted to be brought out is that there is a reminder of the property after assignment of a portion. For example that if A is the total extent

of the property and B is the property that is transferred, then the plaintiff would contend that there is remaining property called A - B, which is equivalent to C. On the other hand, the defendants would contend that there is nothing left out after the transfer and therefore there cannot be any property called 'C' and 'C' schedule is only imaginary schedule put by the plaintiff in order to defeat the real interest of the defendants.

3. These are all matters, which require evidence and consideration at the hands of the court below. Both sides can be permitted to file work memo before the Commissioner. The Commissioner can submit plan and report in accordance with the same. Ultimately, if it is found that the plaintiff is entitled to the same property and unless there is a specific schedule and a clear finding to the effect that the property is transferred by the plaintiff in favour of the defendants, the court may not be in a position to pass a decree. Therefore, for a proper resolution of the disputes between the parties, it is only just that the Commissioner visits the property and locate the property as pointed out by the parties, though it may be different in nature. I make it clear that the court has to arrive at a final finding only

on the basis of the entire materials available, that is, considering the entire documentary evidence produced by the plaintiff as well as the defendants.

With these observations, the Writ Petition is disposed of.

M.N.Krishnan,
Judge.

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